

MEMO ENDORSED

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

LUIS MURIEL HERRERA,

Petitioner,

- against -

THOMAS LAVALLEY,

Respondent.

The Court has reviewed this R+R for clear error (there having been no objections filed) and finds no error, clear or otherwise. The R+R is accordingly adopted as the decision of the Court. The Clerk of Court is respectfully directed to close the case.

**REPORT AND  
RECOMMENDATION**

For the reasons suggested by M.-J. Dawson in

The R+R, no certificate of appealability will issue.

TO THE HONORABLE CATHY SEIBEL, UNITED STATES DISTRICT JUDGE:

So Ordered  
Cathy Seibel  
U.S.D.J.  
12/19/13

**I. INTRODUCTION**

On November 12, 2007, an Orange County jury convicted petitioner Luis Muriel Herrera ("petitioner" or "defendant") of first degree attempted robbery, first degree burglary, second degree assault and fourth degree criminal possession of a weapon (a metal knuckle knife). Petitioner's conviction stemmed from a home invasion in the City of Newburgh, New York on November 6, 2006.<sup>1</sup> He was sentenced on February 21, 2008 to concurrent, determinate terms of imprisonment of ten years (attempted robbery), twelve years (burglary), five years (assault) and one year (weapon possession), along with concurrent terms of five years post-release supervision on each of the felony counts. Petitioner is currently incarcerated at the Fishkill Correctional Facility in Beacon, New York.

Presently before this Court is petitioner's *pro se* Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. Said petition is before me pursuant to an Order of Reference

<sup>1</sup> Petitioner was contemporaneously acquitted of charges which stemmed from a home invasion in the Town of Newburgh, New York on November 27, 2006. He was also acquitted of one count of fourth degree criminal possession of a weapon (specifically a firearm) in conjunction with the November 6<sup>th</sup> incident.

DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 12/20/13